

ALBERT YALE, et al.,
Plaintiffs,
vs.
COMMUNITYONE BANK, N.A.,
Defendant.

Defendant CommunityOne Bank, N.A. (“CommunityOne”), by and through counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure, and the inherent power of the court, respectfully submits this Motion for Appropriate Relief, and in support of this Motion, shows the Court that Plaintiffs’ counsel, on behalf of eleven plaintiffs: (1) represented that the claims of the eleven plaintiffs¹ in this lawsuit would be dismissed, resulting in the cancellation of some depositions and the non-scheduling of the rest; (2) failed to dismiss the claims of those eleven plaintiffs before the fact discovery deadline expired; (3) refused to respond to e-mails requesting an explanation for the failure to dismiss the claims of the eleven plaintiffs; and (4) refused to respond to e-mails requesting an answer as to whether the eleven plaintiffs actually intended to

Case 3:15-cv-00403-RJC-DSC Document 53 Filed 12/27/17 Page 1 of 3

move forward with their claims. The grounds for this Motion are more fully set forth in the accompanying brief and attachments.

RULE 37(d)(1)(B) CERTIFICATION

Pursuant to Rule 37(d)(1)(B), the undersigned counsel hereby certify that they in good faith attempted to confer with Plaintiffs' counsel in an effort to resolve this matter without court action, but Plaintiffs' counsel refused to respond or confer.

WHEREFORE, for the reasons set forth in this Motion and the accompanying brief and attachments, CommunityOne respectfully requests that the Court dismiss the claims of the Subject Plaintiffs with prejudice as a sanction, or in the alternative, exercise the inherent power of the court to require the Subject Plaintiffs to dismiss their claims, and require Plaintiffs' Counsel to bear CommunityOne's costs incurred in bringing this Motion. If the Subject Plaintiffs' claims are not dismissed, CommunityOne requests that the Court allow CommunityOne to conduct written discovery of and take the depositions of the Subject Plaintiffs in Charlotte, North Carolina.

Respectfully submitted, this 27th day of December, 2017.

/s/ H. Landis Wade, Jr.
H. Landis Wade, Jr. (NC Bar No. 11134)
lwade@mcguirewoods.com
T. Richmond McPherson, III (NC Bar No. 41439)
rmcpherson@mcguirewoods.com
Richard H. Conner, III (NC Bar No. 28480)
rconner@mcguirewoods.com
MCGUIRE WOODS LLP
201 North Tryon Street, Ste. 3000
Charlotte, North Carolina 28202
704.343.2000

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **MOTION FOR APPROPRIATE RELIEF** by ECF filing and electronic mail, to the following:

Edward H. Nicholson, Jr.
McConnell & Sneed, LLC
212 S. Tryon Street, Suite 1725
Charlotte, NC 28281
Email: nicholsonshumaker@att.net

Jonathan F. Andres
Jonathan F. Andres P.C.
1127 Hoot Owl Rd.
St. Louis, MO 63105
Email: andres@andreslawpc.com

Sebastian Rucci
Law Offices of Sebastian Rucci
16400 Pacific Coast Hwy, Suite 212
Huntington Beach, CA 92649
Email: SebRucci@gmail.com

Attorneys for Plaintiffs

This the 27th day of December, 2017.

/s/ H. Landis Wade, Jr.
H. Landis Wade, Jr.
Attorney for CommunityOne Bank